APPENDIX A

STATUTORY APPENDIX

1. Section 3 of the Communications Act [47 U.S.C. 153] provides in pertinent part:

Definitions.

For the purposes of this Act, unless the context otherwise requires—

* * * *

(20) Information Service.

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

* * * *

(43) Telecommunications.

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(44) Telecommunications Carrier.

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether

the provision of fixed and mobile satellite service shall be treated as common carriage.

* * * *

(46) Telecommunications Service.

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

* * * *

2. Section 10 of the Communications Act [47 U.S.C. 160] provides:

Competition in Provision of Telecommunications Service.

(a) Regulatory Flexibility.

Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

(b) Competitive Effect to be Weighed.

In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

(c) Petition for Forbearance.

Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

(d) Limitation.

Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

(e) State Enforcement After Commission Forbearance.

A State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying under subsection (a).

3. Section 201 of the Communications Act [47 U.S.C. 201] provides:

Service and Charges.

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: *Provided*, That communications by wire or radio subject to this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further*, That nothing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further*, That nothing in this Act or in any

other provision of law shall prevent a common carrier subject to this Act from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.

4. Section 230 of the Communications Act [47 U.S.C. 230] provides:

Protection for Private Blocking and Screening of Offensive Material.

(a) Findings.

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy.

It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" Blocking and Screening of Offensive Material.

(1) Treatment of Publisher or Speaker.

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil Liability.

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).[1]

(d) Obligations of Interactive Computer Service.

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on Other Laws.

(1) No Effect on Criminal Law.

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

---

[1] So in law. Probably should be subparagraph (A).

(2) No Effect on Intellectual Property Law.

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State Law.

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No Effect on Communications Privacy Law.

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(f) Definitions.

As used in this section:

(1) Internet.

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive Computer Service.

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information Content Provider.

The term "information content provider" means any person or entity that is responsible, in whole or in part,

for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access Software Provider.

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

5. Section 102 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1001] provides in pertinent part:

Definitions.

For purposes of this title—

* * * *

(6) The term "information services"—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(B) includes—

(i) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) electronic publishing; and

(iii) electronic messaging services; but

(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

* * * *

6. Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 153 [Reproduced at 47 U.S.C. 157 nt] provides:

Advanced Telecommunications Incentives.

(a) In General.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) Inquiry.—The Commission shall, within 30 months after the date of enactment of this Act (Feb. 8, 1996), and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) Definitions.—For purposes of this subsection:

(1) Advanced Telecommunications Capability.—The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) Elementary and Secondary Schools.—The term 'elementary and secondary schools' means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

APPENDIX B

MISCELLANEOUS APPENDIX

U.S. Department of Justice

Federal Bureau of Investigation

CALEA Implementation Unit
14800 Conference Center Drive, Suite 300
Chantilly, Virginia 20151

December 8, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation
(CC Docket Nos. 02-33, 95-20 and 98-10; CS Docket No. 02-52; WC Dockets 02-361, 03-45 and 03-211)

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), the United States Department of Justice ("DOJ") components, namely, the Office of the Solicitor General ("OSG"), the Federal Bureau of Investigation ("FBI"), and the Drug Enforcement Administration ("DEA") (collectively, "Law Enforcement"), hereby submit notice of an *ex parte* meeting on December 5, 2003.

The following DOJ personnel attended the meeting:

- John G. Malcolm, Deputy Assistant Attorney General, DOJ Criminal Division
- Scott McIntosh, DOJ Civil Appellate Division.

- Lena Watkins, DOJ Narcotics and Dangerous Drugs Section
- Thomas G. Hungar, Deputy Solicitor General, OSG
- Patrick W. Kelley, Deputy General Counsel, FBI Office of General Counsel
- Jon Pifer, FBI Office of General Counsel
- Merrill (Wes) Clark, Senior Attorney, DEA Office of Chief Counsel
- Joel M. Margolis, consultant, FBI CALEA Implementation Unit

The Commission staff members who attended the meeting were Julius Knapp of the Office of Engineering and Technology, and Susan Aaron and Christopher Killion of the Office of the General Counsel.

The purpose of the meeting was to discuss the Communications Assistance for Law Enforcement Act ("CALEA"), 47 C.F.R. § 1001 *et seq.*, in the context of the above-referenced dockets.[1] In particular, Law Enforcement pre-

---

[1] *See In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements,* Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002); *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) ("*Cable Modem Declaratory Ruling*"); *In the Matter of AT&T Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges,* WC Docket No. 02-361 (filed Oct. 18, 2002); *In the Matter of Petition for Declaratory Ruling That Pulver. com's Free World Dialup Is Neither Telecommunications Service* [sic] *Nor A Telecommunications Service,* WC Docket No. 03-45 (filed Feb. 5, 2003); *In the Matter of Vonage Holdings Corporation Petition for Declaratory*

sented various legal theories under which the Commission could apply CALEA to Internet access service.

Law Enforcement advanced the theory that Internet access service is a "telecommunications service," or at least contains a "telecommunications service" that implicates the CALEA statute. CALEA could cover Internet access, Law Enforcement reasoned, without triggering the full burden of other regulatory mandates promulgated under Title II of the Communications Act of 1934, as amended ("Title II") because the Commission could streamline those burdens using several regulatory tools, including forbearance, rule waivers, extensions of time, and self-certifications of compliance.

Although cable operators are generally not subject to Title II, Law Enforcement remarked that CALEA already applies expressly to cable operators, as well as electric utilities and other utilities, to the extent those entities engage in telecommunications services. Law Enforcement also stated its belief that the Commission's *Cable Modem Declaratory Ruling*, which classifies Internet access as a pure information service, suffers from statutory interpretation problems and directly threatens CALEA. Moreover, Law Enforcement explained that CALEA's importance to national security warrants special treatment of the statute in the Commission's pending broadband Internet access proceedings.

Law Enforcement also contended that Internet access providers fit the unique definition of "telecommunications carrier" set forth at CALEA Section 102(8). Specifically, it argued that Internet access service is a substantial replacement for local exchange service pursuant to CALEA Section 102(8)(B) because both services perform a common set of functions and differ only in the technical form of their respective "pipes." Law Enforcement explained that

---

Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 (filed Sept. 22, 2003).

CALEA's legislative intent was to classify Internet access providers as entities covered by CALEA, not information service providers exempt from CALEA, because Internet access provides the transport to information services and is not an information service by itself.

Alternatively, Law Enforcement suggested that CALEA could attach to Internet access providers by virtue of the "telecommunications" component of Internet access that the Commission believes exists even if Internet access is classified as an information service. This theory would apply under CALEA Section 102(8)(A) or 102(8)(B), it said, without obstructing the Commission's desired classification scheme.

Law Enforcement clarified that while it could settle for any of the theories of CALEA coverage outlined above, it would reserve the right to promote whichever theory is best suited to succeed in court and oppose any Commission analysis that predetermines an unfavorable treatment of CALEA. Law Enforcement emphasized that its efforts are directed toward ensuring that Internet access providers are subject to CALEA, and not toward imposing all other Title II mandates on such providers.

Respectfully submitted,

THE UNITED STATES DEPARTMENT OF JUSTICE
/s/ John G. Malcolm
John G. Malcolm
Deputy Assistant Attorney General,
Criminal Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Suite 2113
Washington, D.C. 20530
(202) 616-3928

THE OFFICE OF THE SOLICITOR GENERAL
/s/ Thomas G. Hungar
Thomas G. Hungar
Deputy Solicitor General
Office of the Solicitor General
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001
(202) 514-2203

THE FEDERAL BUREAU OF INVESTIGATION
/s/ Patrick W. Kelley
Patrick W. Kelley
Deputy General Counsel
Office of the General Counsel
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, N.W.
Room 7427
Washington, D.C. 20535
(202) 324-8067

THE DRUG ENFORCEMENT ADMINISTRATION
/s/ Merrill (Wes) Clark
Merrill (Wes) Clark
Office of Chief Counsel
Drug Enforcement Administration
Washington, D.C. 20537
(202) 307-8030

cc: Julius Knapp (via electronic mail)
Susan Aaron (via electronic mail)
Christopher Killion (via electronic mail)